



One M&T Plaza, Buffalo, New York 14240 PH (716) 840-7918 FX (716) 840-7960
e-mail: jkrenitsky@mtb.com

John C. Krenitsky
Enterprise-wide Compliance Officer

December 11, 2007

Board of Governors of the Federal Reserve System
Attn: Ms. Jennifer J. Johnson, Secretary
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Docket No. R-1298

Department of the Treasury
Office of Critical Infrastructure Protection and Compliance Policy
Room 1327, Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220
Attention: Docket No. Treas-DO-2007-0015

Re: Comments on the Joint Proposed Regulation GG, Implementing provisions of the
Unlawful Internet Gambling Enforcement Act of 2006 (Federal Reserve Board
Docket No. R-1298; Treasury Docket No. Treas-DO-2007-0015)

Dear Ladies and Gentlemen:

This letter is submitted to the Board of Governors of the Federal Reserve System (the "Board") and the Department of the Treasury (the "Treasury Department") (collectively the "Agencies") on behalf of M&T Bank in response to your request for comment on the proposed Regulation GG (the "Proposed Regulation") which is intended to implement provisions of the Unlawful Internet Gambling Enforcement Act of 2006 (the "Act").

Manufacturers and Traders Trust Company (M&T Bank) is a New York State chartered, member bank primarily regulated by the Federal Reserve Bank of New York and the New York State Banking Department. M&T Bank conducts regional banking through nearly 700 branches located in New York, Pennsylvania, Maryland, Virginia, West Virginia, Delaware, New Jersey and the District of Columbia. M&T also has mortgage offices in Alabama, Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Nevada, New Jersey, North Carolina, Ohio, Oregon, Utah and Washington. M&T Bank ranks among the top twenty banks in the United States by asset size with \$60 billion in assets.

M&T Bank is also a member of the Clearing House Payments Company, LLC. As such, M&T Bank is aware that a comment is being submitted on behalf of all members thereof

including M&T Bank. M&T Bank wishes to note that it concurs with and fully supports the comments expressed by the Clearing House Payments Company, LLC. This comment letter is intended to be supplementary thereto.

Burdens of determining whether particular internet gambling transactions are “unlawful” and identifying associated “restricted transactions” have not been properly estimated.

M&T Bank has reviewed the comments submitted by the Center for Regulatory Effectiveness dated November 5, 2007 (TREAS-DO-2007-0015-0027[1].1.pdf) and November 15, 2007 (TREAS-DO-2007-0015-0032[1].1.pdf). Those comments emphasized a lack of sufficient estimation of burden imposed by the proposed regulation. M&T Bank generally concurs with the comments expressed therein and wishes to emphasize its belief that the substantial financial burdens the regulation would impose have not been adequately estimated.

The Act requires that payments resulting from “unlawful” internet gambling transactions be identified and blocked. Payments resulting from lawful internet gambling transactions are permissible. The Act, however, does not define which internet gambling transactions are lawful or unlawful. Instead, it defers to state and tribal laws. As a result, financial institutions would be required to research and remain current on the law of all state and tribal jurisdictions that regulate internet gambling to understand and determine whether particular internet gambling transactions are “lawful.” This is a groundbreaking change from our current government structure in which courts make determinations of whether conduct is lawful or unlawful. Placing the burden of making determinations regarding the lawfulness of internet gambling transactions on financial institutions imposes a financial burden on the banking industry equivalent to establishing a specialized court system (not unlike the US Tax Courts).¹ M&T Bank does not believe that the costs of creating a nationwide specialized court system to rule on matters of state and tribal law related to internet gambling have been incorporated into the analysis of the financial burdens of the regulation.

After determining whether an internet gambling transaction is “lawful,” (and assuming the transaction is determined “unlawful”), the Act and Regulation next require banks to engage in what amounts to a forfeiture proceeding by identifying and blocking any payment for that transaction (referred to as a “restricted transaction”). M&T Bank does not believe the costs of creating a forfeiture process related to internet gambling have

¹ Not only is this an enormous cost, the Act may well be unconstitutional by attempting to require financial institutions to serve in the capacity of courts with authority to rule on matters of state and tribal law regarding internet gambling transactions and to further engage in forfeiture actions regarding the property that results from the underlying transaction. We note that the constitutionality of the Act is currently being litigated in the United States District Court for the District of New Jersey in Interactive Media Entertainment and Gaming Association, LLC v. Alberto Gonzales, Case No. 07-2625.

been accurately estimated or incorporated into the analysis of the financial burdens of the regulation.

The burdens (and powers) imposed on banks under this Act are quite extraordinary when one compares this Act to the Bank Secrecy Act and the related Anti-Money Laundering Acts, USA PATRIOT Act and regulations (collectively the “BSA-AML”). Under BSA-AML laws and regulations, banks are required to identify and report “suspicious” activity. The government then proceeds in court to determine whether reported conduct is legal and uses forfeiture proceedings in court to seize the assets related to conduct determined to be criminal. Under this Act, however, banks are required to apply and interpret state and tribal laws in order to rule on whether specific internet gambling transactions are “unlawful” and then effectively seize the proceeds thereof by blocking such transactions.

This is such an enormous burden that M&T Bank believes that banks will adopt internal policies refusing to do business with persons engaged in any internet gambling transactions, lawful or otherwise. In this regard, M&T Bank concurs with the comments submitted by Compass Bank dated December 6, 2007 (TREAS-DO-2007-0015-0053[1].1.pdf). Compass Bank correctly foresees that financial institutions will refuse to do business with entities directly involved in sponsoring internet gambling activities. M&T Bank believes that banks will also necessarily extend that policy to entities indirectly involved in internet gambling activities such as money services businesses (MSBs). In this regard, M&T Bank refers to the comments submitted by the Money Services Roundtable, dated December 6, 2007 (TREAS-DO-2007-0015-0052[1].1.pdf. If the proposed regulation is adopted in its present form, depository institutions that currently provide services to money services businesses may well re-evaluate whether revenues derived from money services business clients will be sufficient to compensate depository institutions for the considerable risks, and costs of mitigating procedures and controls, of providing service to such businesses. See Money Services Roundtable comments dated December 6, 2007, p. 5. Indeed, M&T Bank believes that additional scrutiny of any internet business will become necessary in order to protect banks from those customers who claim to be engaged in legitimate internet businesses while secretly engaging in unlawful internet gambling activity. Many transactions for internet gambling would be indistinguishable from transactions of selling certain types of even-dollar merchandise such as gift baskets or flowers.

Amplification on Comments Regarding Monitoring

M&T Bank wishes to supplement the comments of The Clearing House Payment Company, LLC, regarding transaction monitoring. Transaction monitoring technology has been developed in the anti-money laundering context. Such technology alerts bank employees to investigate particular transactions based on indicia of money laundering and triggering thresholds. Indicia of money laundering transactions, the development of technology to detect such transactions and reasonable triggering thresholds were

determined over years and years of studying money laundering patterns and activity with the assistance of FinCEN and its analysis of suspicious activity report data. Indicia of restricted transactions related to unlawful internet gambling transactions have not yet been established –much less the technology to systematically identify such transactions. Hence, even if reliable indicia of restricted transactions related to unlawful internet gambling transactions could be specified in the regulation, it should not be assumed that existing anti-money laundering technology can be readily converted to identify such transactions. Just as it did in the anti-money laundering context, the development of such technology and the determination of reasonable triggering thresholds will take years to develop.

Amplification of Comments regarding Exempt Payment Systems

M&T Bank agrees with The Clearing House Payment Company, LLC comments that none of the payment systems can be made fully capable of compliance with Act. However, M&T Bank also recognizes that the Agencies have to develop some means of implementing the Act. Consequently, M&T Bank concurs with the comments submitted by Compass Bank dated December 6, 2007 (TREAS-DO-2007-0015-0053[1].1.pdf) that the Agencies should consider expanding the exemptions to all transactions occurring in ACH, check collection or wire transactions at least until such time as the ability to code transactions and merchants similar to that as exists in cards is developed.

Amplification of Comments regarding the government's development of a list

M&T Bank wishes to further amplify the comments of The Clearing House Payment Company, LLC with regard to the creation of a list by the government to aid in the identification of unlawful internet gambling transactions. While M&T Bank understands the difficulties associated with creating a list of persons engaged in unlawful internet gambling transactions, it would be useful to create a list of persons engaged in internet gambling transactions (lawful or otherwise). The development of such a list would assist in the development of indicia of internet gambling transactions as a predicate step toward determining those which are unlawful. As noted above, M&T Bank does not believe that banks should tread upon the jurisdiction of state and tribal courts and rule upon matters of state and tribal law to determine whether internet gambling transactions are unlawful. If, however, banks are ultimately required to do so, the government should minimally provide assistance to banks in identifying such activity through the creation of such a list.

In conclusion, M&T Bank incorporates the recommendations made in the comment letters submitted by The Clearing House Payment Company, LLC (Date and Docket No. unavailable), The Center for Regulatory Effectiveness dated November 5, 2007 (TREAS-DO-2007-0015-0027[1].1.pdf) and November 15, 2007 (TREAS-DO-2007-0015-0032[1].1.pdf); and Compass Bank dated December 6, 2007 (TREAS-DO-2007-0015-0053[1].1.pdf). M&T Bank would further recommend that the Agencies suspend further rulemaking while the constitutionality of the underlying Act is determined in the Courts.



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Thank you for the opportunity to comment on this rule. We hope that the foregoing comments were useful to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'John C. Krenitsky', written over a horizontal line.

John C. Krenitsky, Esq.

Enterprise Compliance Officer